No. 88-1491

(4)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

KEITH MILTON RHINEHART, a single person; THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation; KATHI BAILEY, a married person; LILLIAN YOUNG, a married person; TONI STRAUCH, a married person; and ILSE TAYLOR, representing women who were members of the Aquarian Foundation on or after March 17, 1978, *Appellants*,

v.

SEATTLE TIMES COMPANY, a Delaware corporation, d/b/a The Seattle Times; WALLA WALLA UNION-BULLETIN, INC.; ERIK LACITIS and JANE DOE LACITIS; JOHN WILSON and REBECCA KAREN WILSON; JOHN MCCOY and KAREN MCCOY, *Appellees*.

On Appeal from the Court of Appeals of the State of Washington

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MOTION TO DISMISS

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QUESTIONS PRESENTED

1. May a plaintiff in a civil action for defamation and invasion of privacy assert a constitutional privilege to withhold relevant evidence while simultaneously seeking damages premised upon the allegedly privileged information?

2. May a plaintiff in a civil action for defamation and invasion of privacy assert a constitutional privilege to withhold, among other things, a copy of a videotape depicting the very events at issue in the plaintiff's lawsuit?

3. Does a state appellate court violate the due process and equal protection clauses of the Fourteenth Amendment when it concludes, pursuant to well-established rules and case law, that an appeal presenting the same meritless issues that were asserted unsuccessfully in at least two prior appeals by the same litigants is a frivolous appeal?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	vi
OPINION BELOW	2
JURISDICTION	2
COURT RULES INVOLVED	4
STATEMENT OF THE CASE	4
ARGUMENT	10
I. APPELLANTS' CLAIM THAT THEY HAVE A CONSTITUTIONAL RIGHT TO AVOID CIVIL DISCOVERY IS NOT A SUBSTANTIAL ISSUE THAT WARRANTS REVIEW BY THIS COURT	10
A. Appellants Have Three Times Unsuccessfully Presented These Same Arguments to This Court—Their Fourth Attempt Offers Nothing New	10
1. Appellants Cannot Resurrect Their Unsuccessful 1984 Petition for Certiorari By Asserting a Frivolous and Untimely State Law Objection to Discovery	10
B. Appellants Have Not Cited Any Decision of This Court That Is Inconsistent With the Decision Below	11
C. Nor Is the Decision Below in Conflict With Other Appellate Rulings	12
II. APPELLANTS' EFFORT TO AVOID DISCLOSURE OF THE WALLA WALLA VIDEOTAPE OR OBTAIN A SECOND PROTECTIVE ORDER DOES NOT PRESENT ANY SUBSTANTIAL FEDERAL QUESTION	14

TABLE OF CONTENTS—Continued

Page

A. Again, the Court Below Properly Held That Appellants Could Not Invoke a Constitutional Privilege to Conceal Evidence of Events That They Had Placed at Issue by Their Lawsuit.. 15

B. Appellants' Argument That They Were Entitled to Issuance of a Second Protective Order Is at Odds With the Record and Inconsistent With This Court's Decision in *Seattle Times* 16

III. THE DECISION TO AWARD ATTORNEYS' FEES AND EXPENSES AS A CONSEQUENCE OF APPELLANTS' FRIVOLOUS APPEAL DOES NOT VIOLATE ANY FEDERAL CONSTITUTIONAL RIGHT 18

A. Appellants' Challenge to RCW 4.84.185 Is Irrelevant Because the Washington Statute Was Not at Issue in This Case 18

B. In Any Event, Appellants' Due Process Arguments Are Not Supported by the Record..... 18

1. Appellants Received Ample Warning..... 18

2. Washington's Standards for Determining What Is a "Frivolous" Appeal Are Neither Vague Nor a "Hodge-Podge" 19

3. Appellants Cannot Complain of Any Constitutional Violation, Having Been Afforded Several Opportunities to Present the Same Meritless Arguments 20

4. State Courts Have the Inherent Authority to Adjudicate and, if Necessary, Impose Sanctions for Frivolous and Repetitive Constitutional Challenges 22

TABLE OF CONTENTS—Continued

Page

C. Appellants Have Not Articulated Any Equal Protection Rights That Were Violated by the Court Below 22

1. Distinctions Between Frivolous and Non-frivolous Appeals Do Not Violate the Equal Protection Clause 24

2. The Question Whether Sanctions May Be Awarded for the Assertion of Frivolous State Law Theories Is Neither Substantial Nor a Federal Question 26

D. Appellants Failed to Assert Their Federal Constitutional Arguments on a Timely Basis.. 26

CONCLUSION 28

APPENDIX

Appendix A— Washington Rule of Appellate Procedure ("RAP") 18.7 ..... 1a

Appendix B—Washington Civil Rule ("CR") 11 ..... 2a

Appendix C—Washington Rule of Appellate Procedure ("RAP") 18.9(a) 3a

TABLE OF AUTHORITIES

	Page
Allen v. McCurry, 449 U.S. 90 (1980)	22
Aquarian Foundation v. Law Offices of Edwards & Barbieri, 108 S. Ct. 222 (1987), *rehearing denied*, 108 S. Ct. 1065 (1988)	10
Bankers Life & Casualty Co. v. Crenshaw, 108 S. Ct. 1645 (1988)	24, 25, 27
Bohn v. Bohn, 316 U.S. 646 (1942) (per curiam)	23
Bowe v. Scott, 233 U.S. 658 (1914)	27
Britt v. Superior Court, 20 Cal. 3d 844, 143 Cal. Rptr. 695, 574 P.2d 766 (1978)	13, 14
California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972)	21, 24
Camer v. Seattle School District No. 1, 52 Wash. App. 531, 762 P.2d 356 (1988)	24
Cardinale v. Louisiana, 394 U.S. 437 (1969)	27
Chandler v. Florida, 449 U.S. 560 (1981)	3
Church of Hakeem, Inc. v. Superior Court, 110 Cal. App. 3d 384, 168 Cal. Rptr. 13 (1980)	13
Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985)	24
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1974)	11
Deming v. Carlisle Packing Co., 226 U.S. 102 (1912)	23
Don't Bankrupt Washington Committee v. Continental Illinois Nat'l Bank & Trust Co., 460 U.S. 1077 (1983)	2
Familias Unidas v. Briscoe, 544 F.2d 182 (5th Cir. 1976)	12, 13
Familias Unidas v. Briscoe, 619 F.2d 391 (5th Cir. 1980)	13
Herr v. Aquarian Foundation, Inc., Adversary No. 80-0871 (Bankr. W.D. Wash. Feb. 28, 1984), *aff'd*, No. C 84-496V (W.D. Wash. Sept. 7, 1984), *appeal dismissed*, No. 84-4369 (9th Cir. Oct. 11, 1985)	21
Illinois v. Gates, 462 U.S. 213 (1983)	27
In re McDonald, 57 U.S.L.W. 3545 (1989) (per curiam)	23, 25

TABLE OF AUTHORITIES—Continued

	Page
Mergenthaler Linotype Co. v. Davis, 251 U.S. 256 (1920)	4
Millers Casualty Ins. Co. v. Briggs, 100 Wash. 2d 9, 665 P.2d 887 (1983)	20, 25
Mississippi Central R.R. Co. v. Smith, 299 U.S. 518 (1936)	23
NAACP v. Alabama, 357 U.S. 449 (1958)	11, 12
New York Central & Hudson River R.R. v. New York, 186 U.S. 269 (1902)	27
New York ex rel. Bryant v. Zimmerman, 278 U.S. 63 (1928)	27
Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978)	3
Petersen v. Washington, 100 Wash. 2d 421, 671 P.2d 230 (1983)	27
Rhinehart v. KIRO, Inc., 44 Wash. App. 707, 723 P.2d 22 (1986), *review denied*, 108 Wash. 2d 1008, *appeal dismissed sub nom., Rhinehart v. Tribune Pub. Co.*, 108 S. Ct. 51 (1987)	7, 15, 19
Rhinehart v. Seattle Times Co., 98 Wash. 2d 226, 654 P.2d 673 (1982), *cert. denied*, 467 U.S. 1230 (1984)	*passim*
Rhinehart v. Seattle Times, 467 U.S. 1230 (1984)	*passim*
Rhinehart v. Seattle Times Co., 51 Wash. App. 561, 754 P.2d 1243, *review denied*, 111 Wash. 2d 1025 (1988)	*passim*
Rhinehart v. Seattle Times, 15 Med. L. Rptr. 1509 (King County Super. Ct. 1988)	18
Rhinehart v. Tribune Pub. Co., 108 S. Ct. 51 (1987)	10
Rio Grande Western Ry. Co. v. Stringham, 239 U.S. 44 (1915), *overruled on other grounds, Great Northern Ry. v. United States*, 315 U.S. 262 (1942)	11
In re R.M.J., 455 U.S. 191 (1982)	3
Roe v. Kansas, 278 U.S. 191 (1929)	23
Rohr Aircraft Corp. v. San Diego County, 362 U.S. 628 (1960)	3
Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984)	*passim*
Slaker v. O'Connor, 278 U.S. 188 (1929)	23

TABLE OF AUTHORITIES—Continued

	Page
Southern Ry. Co. v. Gadd, 233 U.S. 572 (1914)	23
Streater v. White, 26 Wash. App. 430, 613 P.2d 187, *review denied*, 94 Wash. 2d 1014 (1980)	20
Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979)	13
Talamini v. Allstate Ins. Co., 470 U.S. 1067 (1985)	23
Tatum v. Regents of the University of Nebraska-Lincoln, 462 U.S. 1117 (1983)	23
Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464 (1982)	18
Wagner Electric Mfg. Co. v. Lyndon, 262 U.S. 226 (1923)	23
Washington v. Davis, 38 Wash. App. 600, 686 P.2d 1143 (1984)	27
Wilson v. Cook, 327 U.S. 474 (1946)	4
Constitutional Provisions	
U.S. Const. Amend. I	12, 15, 24
U.S. Const. Amend. VI	28
U.S. Const. Amend. VII	28
U.S. Const. Amend. XIV	18, 19, 24, 25
Wash. Const. Art. I, § 3	27
Wash. Const. Art. I, § 12	27
Statutes	
28 U.S.C. § 1257	2, 3
28 U.S.C. § 1927	23
28 U S.C. § 2103	3, 23
RCW 4.84.185	18
RCW 5.60.060(3)	8, 26
Rules	
Sup. Ct. R. 49.2	23
Sup. Ct. R. 50.7	23
Fed. R. App. P. 38	23
Fed. R. Civ. P. 11	22
Wash. RAP 18.7	4, 22, 25
Wash. RAP 18.9(a)	4, 22, 25
Wash. CR 11	4, 20, 22, 25
Wash. CR 37	14

TABLE OF AUTHORITIES—Continued

Other Authorities Page

Brief in Opposition to Cross-Petition for Writ of Certiorari, filed in *Rhinehart v. Seattle Times*, 467 U.S. 1230 (1984) 12, 13

Appellees' Joint Motion to Dismiss, filed in *Rhinehart v. Tribune Pub. Co.*, 108 S. Ct. 51 (1987) 15

Jurisdictional Statement, filed in *Aquarian Foundation v. Law Offices of Edwards & Barbieri*, 108 S. Ct. 222 (1987), *rehearing denied*, 108 S. Ct. 1065 (1988) 26

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No. 88-1491

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v.

SEATTLE TIMES COMPANY, a Delaware corporation, d/b/a The Seattle Times; WALLA WALLA UNION-BULLETIN, INC.; ERIK LACITIS and JANE DOE LACITIS; JOHN WILSON and REBECCA KAREN WILSON; JOHN MCCOY and KAREN MCCOY, *Appellees*.

On Appeal from the Court of Appeals of the State of Washington

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MOTION TO DISMISS

Appellees [1] move to dismiss this appeal on the grounds that it does not present a substantial federal question

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[1] Appellee Walla Walla Union-Bulletin, Inc., is a wholly-owned subsidiary of appellee Seattle Times Company. Blethen Corporation, a privately-held corporation, owns 50.5% and Ridder Publications, Inc., a company that is affiliated with Knight-Ridder Newspapers, Inc., a publicly-held corporation, owns 49.5% of the common voting stock of Seattle Times Company.

and that the federal questions sought to be reviewed were neither timely nor properly raised or were not expressly passed on by the Washington Court of Appeals. In the alternative, in the event the Court concludes that the proper mode of review is by petition for certiorari, appellees request that the writ of certiorari be denied.

OPINION BELOW

The opinion of the Washington Court of Appeals is published. *Rhinehart v. Seattle Times Co.*, 51 Wash. App. 561, 754 P.2d 1243, *review denied*, 111 Wash. 2d 1025 (1988).

JURISDICTION

The judgment of the Washington Court of Appeals was issued on May 31, 1988. Appellants [2] filed a timely motion for reconsideration with the Court of Appeals, which was denied on August 1, 1988, and a timely petition for review with the Washington Supreme Court, which was denied on November 29, 1988. On January 18, 1989, appellants filed a "Notice of Appeal to U.S. Supreme Court" in the King County Superior Court and in the Washington Supreme Court. Appellees' counsel was served with a copy of the "Notice of Appeal" on January 24, 1989.

There is some doubt as to whether an appeal properly lies.[3] It is clear that the first two of appellants' issues

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[2] Only four of the seven plaintiffs who are identified as "appellants" in the Jurisdictional Statement were in fact parties in the Washington Court of Appeals. "Appellant" Sylvia Corwin dismissed her claims against appellees on December 19, 1980, and "appellants" Kathi Bailey and Toni Strauch did not appeal the trial court's January 7, 1987 dismissal order. *See Don't Bankrupt Washington Committee v. Continental Illinois Nat'l Bank & Trust Co.*, 460 U.S. 1077 (1983) (dismissing appeal for lack of jurisdiction because appellant lacked standing to bring appeal).

[3] This Court's appeal jurisdiction was eliminated by Pub. L. No. 100-352, 102 Stat. 662 (1988). The repeal did not, however, "affect

must be presented by means of a petition for certiorari, because they involve a "right, privilege or immunity [that] is specially set up or claimed under the Constitution . . . of . . . the United States." 28 U.S.C. § 1257(3). Indeed, their first and second issues are simply a replay of their earlier petition for certiorari. *See Rhinehart v. Seattle Times*, 467 U.S. 1230 (1984). As for their third issue, while appellants claim that they are challenging a Washington statute,[4] the finding that their appeal was frivolous was premised upon three Washington court rules.[5] In the court below, appellants did not draw in question the "validity" of any of these court rules, as required by 28 U.S.C. § 1257(2). *See Rohr Aircraft Corp. v. San Diego County*, 362 U.S. 628, 629-30 (1960);

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the right to review or the manner of reviewing the judgment or decree of a court that was entered" before the effective date of the statute. 102 Stat. 664. The judgment of the Court of Appeals was issued on May 31, 1988, prior to the enactment of the statute. Therefore, the propriety of an appeal must be determined by 28 U.S.C. § 1257(2) as it existed before the recent legislation. If it concludes that an appeal does not lie, this Court may treat the appeal as a petition for a writ of certiorari pursuant to 28 U.S.C. § 2103.

[4] *See* J.S. at 1, 21-28. References to the Jurisdictional Statement and its Appendix will be designated "J.S." and "J.S. App." The Clerk's Papers and Supplemental Clerk's Papers, which were filed in the trial court and became part of the record on appeal, are designated as "CP" and "SCP," respectively. The Transcript of Proceedings in the trial court is designated as "RP." Documents that were filed by the parties in the Washington appellate courts are identified by name and filing date.

[5] J.S. App. at 40-42. The fact that appellants' attack is properly directed at the application of state court rules rather than a state statute does not of itself prevent resort to 28 U.S.C. § 1257(2). This Court has treated a challenge to the validity of a state court rule as, in effect, a challenge to a state statute and therefore properly a subject of the Court's appeal jurisdiction. *See, e.g., In re R.M.J.*, 455 U.S. 191 (1982); *Chandler v. Florida*, 449 U.S. 560 (1981); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978).

Wilson v. Cook, 327 U.S. 474, 482 (1946); *Mergenthaler Linotype Co. v. Davis*, 251 U.S. 256, 259 (1920).

COURT RULES INVOLVED

The Washington Court of Appeals relied upon three court rules in finding appellants' appeal to be frivolous: (A) Washington Rule of Appellate Procedure ("RAP") 18.7, attached as Appendix A; (B) Washington Civil Rule ("CR") 11, attached as Appendix B; and (C) Washington Rule of Appellate Procedure ("RAP") 18.9(a), attached as Appendix C.

STATEMENT OF THE CASE

This Court is familiar with this lawsuit:

> In recent years, the Seattle Times and the Walla Walla Union-Bulletin have published stories about Rhinehart and the Foundation. All together 11 articles appeared in the newspapers during the years 1973, 1978, and 1979. . . . The four articles that appeared in 1978 concentrated on an "extravaganza" sponsored by Rhinehart at the Walla Walla State Penitentiary. The article stated that he had treated 1,100 inmatees to a six-hour-long show, during which he gave away between $35,000 and $50,000 in cash and prizes. One article described a "chorus line of girls [who] shed their gowns and bikinis and sang . . ."
>
> . . .
>
> Rhinehart brought this action in the Washington Superior Court on behalf of himself and the Foundation against the Seattle Times, the Walla Walla Union-Bulletin, the authors of the articles, and the spouses of the authors . . . . The complaint alleges that the articles contained statements that were "fictional and untrue" and that the defendants . . . knew, or should have known, they were false. . . . With respect to the Foundation, the complaint . . . states "[T]he articles have, or may have had, the effect of discouraging contributions by the membership and public and thereby diminished the financial

> ability of the Foundation to pursue its corporate purposes." . . . The complaint alleges that the articles misrepresented the role of the Foundation's "choir" and falsely implied that female members of the Foundation had "stripped off all their clothes and wantonly danced naked. . . ."

Seattle Times Co. v. Rhinehart, 467 U.S. 20, 22-23 (1984) (citations omitted; footnotes omitted).

The issue in *Seattle Times* was the constitutionality of a protective order issued by the King County Superior Court on June 26, 1981, which prohibited publication or dissemination of any information relating to appellants' "financial affairs" or the "names and addresses" of any Foundation members or donors obtained "through the use of all of the discovery processes." SCP 1513-14. This Court unanimously concluded that the protective order did not violate the First Amendment of the United States Constitution:

> To be sure, Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required. . . . The trial court is in the best position to weigh fairly the competing needs and interests of parties affected by discovery. The unique character of the discovery process requires that the trial court have substantial latitude to fashion protective orders.

Seattle Times, 467 U.S. at 36.

On the same day it issued the protective order that was at issue in *Seattle Times*, the King County Superior Court entered an order compelling discovery, which required appellants to answer various interrogatories served in 1980. Among other things, the court "ordered [appellants] to identify all donors who made contributions during the five years preceding the date of the complaint, along with the amounts donated." *Seattle Times*, 467 U.S. at 25. Appellants immediately filed an interlocutory

appeal, claiming the order violated their constitutional rights of religion, association, and privacy.

Accepting discretionary review, the Washington Supreme Court rejected their arguments and upheld the discovery order in its entirety in December 1982. The court stated:

> Turning to the plaintiffs' cross appeal, the major contention is that requiring disclosure of membership lists, donors and benefactors violates the rights of privacy and the associational rights of these persons. As should be clear from our previous discussion, certain invasions of those rights are necessary to enable the courts to render a just decision upon the relevant facts. The protective order shields the plaintiffs from abuse of the discovery privilege. The more extensive protection which they desire is within the discretion of the trial court in a proper case; but the plaintiffs are not entitled to such an order as a matter of right. There is no showing that the protective order is inadequate to prevent any abuse threatened by the defendants.
>
> The plaintiffs, as the defendants point out, are attempting to assert a privilege to withhold evidence in a private suit where they seek damages based upon the allegedly privileged information. We have reviewed the cases cited in their brief and find none which supports the theory in the circumstances of this case. All of the evidence covered by the order compelling disclosure was relevant to the plaintiffs' claims and the defense of those claims, and their legitimate interests in privacy and association were protected by the court's order insofar as was possible without denying the defendants the right to develop their defenses.

Rhinehart v. Seattle Times Co., 98 Wash. 2d 226, 257-58, 654 P.2d 673, 690-91 (1982). Appellants unsucessfully sought certiorari in this Court. *Rhinehart v. Seattle Times*, 467 U.S. 1230 (1984).

The case was then remanded to King County Superior Court, and the trial judge, the Honorable James J. Dore, ordered appellants to comply with the discovery order. SCP 1660-1740, 1822-23. Appellants, instead, served incomplete and evasive answers and responses. CP 201-14; J.S. App. at 27, 36, 37. Appellees next served a request for production of documents, requesting two films and a videotape that appellants had made of the 1978 Walla Walla performance that was the subject of their lawsuit. CP 168-70. Appellants did not file timely objections or responses to this request for production. J.S. App. at 27, 32 n.2.

In October 1986, appellees moved to dismiss for failure to comply with the 1981 discovery order. CP 171-73. At the same time, appellees filed a motion to compel production of the films and the Walla Walla videotape. CP 215-57. In response, appellants moved to "clarify" the 1981 discovery order and demanded a new protective order, because they claimed the films and videotape allegedly "would reveal the names of members of the Aquarian Foundation." CP 344-83, 421-78; SCP 1840; Respondents' Motion for Leave to Correct or Supplement the Record at Ex. A, filed Mar. 8, 1988.

Appellees opposed these motions, noting that the 1981 discovery order had already been affirmed by the Washington Supreme Court and that any questions as to the discoverability of the films and the Walla Walla videotape had been resolved by the Court of Appeals.[6] CP 521-42. In response, appellants devised a new objection to the enforceability of the 1981 discovery order. They

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[6] In August 1986, in a defamation lawsuit filed by these appellants against other media defendants, the court held that the films and videotape were properly discoverable and that appellants' objections were "without merit." *Rhinehart v. KIRO, Inc.*, 44 Wash. App. 707, 711. 723 P.2d 22, 25 (1986), *review denied*, 108 Wash. 2d 1008, *appeal dismissed sub nom., Rhinehart v. Tribune Pub. Co.*, 108 S. Ct. 51 (1987).

claimed that, to the extent it sought the names and addresses of Foundation members and donors, the order violated RCW 5.60.060(3), Washington's statutory priest-penitent privilege, which prohibits the testimony as to any "confession" made to a clergyman or priest. RP (Dec. 5, 1986) at 3-14.

Appellants refused to comply with the 1981 discovery order or with the trial court's order that they produce the films and the Walla Walla videotape. CP 344, 498-99, 545-47, 551-80, 581-635, 637-42, 643-45. On January 7, 1987, the court dismissed their complaint with prejudice. CP 654-56, 657-62.

Appellants appealed their dismissals. Appellees warned appellants and informed the Court of Appeals that they would seek appropriate sanctions because the appeal was "patently frivolous." Answer to Civil Appeal Statement at 10, filed Jan. 27, 1987. In their brief of the Court of Appeals, appellees renewed this request. Brief of Respondents at 66-67, filed Nov. 9, 1987.

When appellants submitted their Reply Brief, they did not suggest any constitutional impediment to the court's authority to find that their appeal was frivolous or to impose appropriate sanctions. *See* Reply Brief of Appellants, filed Nov. 30, 1987.

On May 31, 1988, the Court of Appeals issued its decision, affirming the dismissal orders, holding that the appeal was frivolous, and remanding to the trial court for a determination of the amount of attorneys' fees and expenses to be awarded appellees. J.S. App. at 19-42. The court stated:

> Here even if some of the issues presented in this appeal have not been waived, the issues are devoid of merit with no reasonable possibility of reversal since most of the issues are governed by *Rhinehart v. Seattle Times Co., supra*, and *Rhinehart v. KIRO,*

> *supra*, and the other issues are not debatable issues upon which reasonable minds might differ.

J.S. App. at 41-42.

Appellants moved for reconsideration with the Court of Appeals, arguing that the court's decision violated their equal protection rights. Motion for Reconsideration at 7-8, filed June 20, 1988. Respondents opposed reconsideration. Respondents' Answer to Motion for Reconsideration, filed July 22, 1988. The Court of Appeals denied reconsideration on August 1, 1988. J.S. App. at 43.

On August 31, 1988, appellants sought review with the Washington Supreme Court. They argued that the "ruling that this appeal is frivolous violates appellants' due process rights." Petition for Review at 12, filed Aug. 31, 1988. Appellants also asserted that "[t]he finding of frivolity impinges on the constitutional right of access to the courts [amendment 6] and freedom of speech [amendment 7.] [*sic*]." *Id.* at 13. Appellees opposed review. Respondents' Answer to Petition for Review, filed Sept. 22, 1988. The Washington Supreme Court denied review on November 29, 1988. J.S. App. at 44.

ARGUMENT

I. APPELLANTS' CLAIM THAT THEY HAVE A CONSTITUTIONAL RIGHT TO AVOID CIVIL DISCOVERY IS NOT A SUBSTANTIAL ISSUE THAT WARRANTS REVIEW BY THIS COURT.

A. Appellants Have Three Times Unsuccessfully Presented These Same Arguments to This Court—Their Fourth Attempt Offers Nothing New.

This is appellants' fourth attempt to interest this Court in their theory that they are immune under the United States Constitution from the obligations of civil discovery. Each attempt has been unsuccessful.[7]

This appeal, which challenges the identical order that resulted in a denial of certiorari in *Rhinehart v. Seattle Times*, 467 U.S. 1230 (1984) and the same discovery request that was the subject of their unsuccessful appeal in *Rhinehart v. Tribune Pub. Co.*, 108 S. Ct. 51 (1987), should be treated no differently. In neither case was review by this Court warranted or appropriate. The facts and the law have not changed, and the Court should dismiss this appeal as well.

1. *Appellants Cannot Resurrect Their Unsuccessful Petition for Certiorari By Asserting a Frivolous and Untimely State Law Objection to Discovery.*

Appellants' constitutional challenge to the 1981 discovery order was concluded with the Washington Supreme

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[7] *See Rhinehart v. Seattle Times*, 467 U.S. 1230 (1984) (denying certiorari as to the identical 1981 order that appellants again seek to challenge in this appeal); *Rhinehart v. Tribune Pub. Co.*, 108 S. Ct. 51 (1987) (dismissing appeal challenging discoverability of the same Walla Walla videotape that is at issue in this appeal); *Aquarian Foundation v. Law Offices of Edwards & Barbieri*, 108 S. Ct. 222 (1987), *rehearing denied*, 108 S. Ct. 1065 (1988) (dismissing appeal claiming constitutional right to refuse to disclose the address of appellant Lillian Young and her husband, Steve Young, in a collection action filed by appellants' former attorneys in *Rhinehart v. Seattle Times, supra*).

Court's December 1982 decision and this Court's denial of certiorari in 1984. *Rhinehart v. Seattle Times*, 467 U.S. 1230 (1984). After remand, however, appellants refused to comply with the discovery order and offered a new objection—that the Washington priest-penitent privilege exempted them from compliance with discovery. On appeal they did not argue any federal constitutional objections to the 1981 order. *See* Brief of Appellants at 33-35, filed May 20, 1987.

The Court of Appeals decided to entertain (and reject as frivolous) the newly-asserted state law objection. J.S. App. at 32-33, 40-42. While appellants had thus persuaded the court to consider a meritless state law objection that they properly should have asserted eight years earlier, the decision involved only nonfederal issues and does not provide a platform for demanding a second opportunity to assert their earlier, unsuccessful, federal challenge.[8] *See Rio Grande Western Ry. Co. v. Stringham*, 239 U.S. 44 (1915), *overruled on other grounds*, *Great Northern Ry. v. United States*, 315 U.S. 262 (1942).

B. Appellants Have Not Cited Any Decision of this Court That Is Inconsistent With the Decision Below.

Appellants' claim that the decision below conflicts with *NAACP v. Alabama*, 357 U.S. 449 (1958), is, quite

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[8] Appellants suggest that the Court should disregard its 1984 denial of certiorari because in opposing that petition appellees had argued, among other things, that "the decision was not ripe for review and would be an improper advisory opinion if accepted for review at that time." J.S. at 11. Appellees' argument was premised upon the final paragraph in the 1981 discovery order, which reserved to the trial court "the right to redetermine what discovery shall be ordered in the event the protective order is modified on review." CP 151. But this reservation language ceased to have any significance or effect after May 21, 1984, when this Court upheld the protective order in *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984). Thus, the Court's denial of certiorari on June 4, 1984, involved a final order. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 479 (1975).

simply, wrong.[9] As appellees noted almost six years ago, when appellants first sought to challenge the 1981 discovery order in this Court:

> All of the information requested in respondents' interrogatories is directly related to the claims that petitioners themselves have put in issue. . . . Thus, despite petitioners' attempt to associate their position with the First Amendment principles articulated by this Court in *NAACP v. Alabama*, 357 U.S. 449 (1958), this case does not involve state intrusion into associational or privacy interests. Rather, the case simply turns upon whether a plaintiff in an action for damages may be permitted to "use the First Amendment simultaneously as a sword and a shield." . . .

Brief in Opposition to Cross-Petition for Writ of Certiorari at 13, filed in *Rhinehart v. Seattle Times*, 467 U.S. 1230 (1984) (citations omitted).

C. Nor Is the Decision Below In Conflict With Other Appellate Rulings.

Appellants' effort to manufacture the appearance of a conflict with other appellate courts also falls flat. J.S. at 15-16. No appellate decision has ever gone as far as appellants would apparently push this Court.

For example, appellants rely upon *Familias Unidas v. Briscoe*, 544 F.2d 182 (5th Cir. 1976), for the broad proposition that "disclosure of members is repugnant to the constitution." J.S. at 16. Appellants fail to inform

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[9] Nor should this Court credit appellants' suggestion that the "potential harm" is "greater to Aquarian Foundation than it was to the NAACP," because appellants feared that "the membership lists" would "reach the public record" through "a daily newspaper waiting to present the identity of members to every person in Seattle." J.S. at 15. In making this argument, appellants have chosen to ignore the 1981 protective order upheld by this Court in *Seattle Times*, which prohibited the newspaper from publishing the names and addresses of *any* Foundation members or donors obtained in discovery. *See Seattle Times*, 467 U.S. at 27 n.8.

the Court that in *Familias Unidas*, in sharp contrast to this case, the plaintiffs had dropped their claims for monetary relief, which "completely dissipated" any right to inquire into membership identity. *Id.* at 192. As the Fifth Circuit noted in a later ruling, the plaintiffs had eliminated "the need to answer the offensive interrogatories by amending their complaint to eliminate all class action and damage claims on behalf of the organization." *Familias Unidas v. Briscoe*, 619 F.2d 391, 397 (5th Cir. 1980).

Nor can appellants argue that a conflict exists because of cases such as *Church of Hakeem, Inc. v. Superior Court*, 110 Cal. App. 3d 384, 168 Cal. Rptr. 13 (1980), and *Surinach v. Pesquera de Busquets*, 604 F.2d 73 (1st Cir. 1979). J.S. at 15-16. Neither decision, as appellees have previously pointed out, deals with the circumstances of this case, where appellants are relying upon the allegedly privileged information in order to obtain a significant damage award. *See* Brief in Opposition to Cross-Petition for Writ of Certiorari at 16-18, filed in *Rhinehart v. Seattle Times*, 467 U.S. 1230 (1984).

Appellants also rely upon the nonexistent case of "*Britt v. Superior Court*, 20 Cal. App. 384, 168 Cal. Rptr. 695 (1978)." J.S. at 15. In fact, in *Britt v. Superior Court*, 20 Cal.3d 844, 858, 143 Cal. Rptr. 695, 703, 574 P.2d 766, 775 (1978), the California Supreme Court expressly refused to recognize an absolute privilege to refuse to disclose "information that relates to an issue which has been posited by the party claiming the privilege's protection." Thus, while it acknowledged a generalized constitutional privilege preventing "exposure of private associational affiliations and activities," the court held:

> When such associational activities are *directly relevant* to the plaintiff's claim, and disclosure of the plaintiff's affiliations is essential to the fair resolution of the lawsuit, a trial court may properly compel such disclosure.

20 Cal. 3d at 859, 143 Cal. Rptr. at 704, 574 P.2d at 775 (emphasis in original). Because the "plaintiffs' complaints do not relate to, nor put in issue, any aspect of their private associational conduct," the *Britt* court concluded "that plaintiffs have not waived the constitutional privacy interests at issue here." 20 Cal. 3d at 859-60, 143 Cal. Rptr. at 704-05, 574 P.2d at 776. In this case, where appellants' claimed damages are the loss of members and donors, *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 23 n.2 (1984), the holding in *Britt* is easily harmonized with the decision below.

Appellants' unsupported assertion that "[t]he record is devoid of any showing . . . that there was prejudice to the defense in not obtaining a membership list" (J.S. at 17) is, to be blunt, completely unsupported by the record. Appellants, after all, premised their right to damages on allegations that individual members and donors were driven away from the Foundation by the allegedly defamatory publications. Denying appellees any right to inquire beyond the raw numbers supporting appellants' damage claims is clear prejudice. The Court of Appeals properly concluded pursuant to CR 37 of the Washington Civil Rules that appellees "have been prejudiced by the withholding of evidence relevant to the preparation of their defense." J.S. App. at 37.

II. APPELLANTS' EFFORT TO AVOID DISCLOSURE OF THE WALLA WALLA VIDEOTAPE OR OBTAIN A SECOND PROTECTIVE ORDER DOES NOT PRESENT ANY SUBSTANTIAL FEDERAL QUESTION.

Appellants claim a constitutional right to withhold production of a videotape depicting the 1978 performance that they conducted before 1,100 inmates at Walla Walla State Penitentiary—the very events that they themselves placed at issue in their defamation lawsuit. In 1986, when appellees sought discovery of the videotape, appellants declared this crucial evidence "sacred," refused to permit appellees to copy or view the videotape, and de-

manded a new protective order imposing onerous restrictions and conditions. J.S. App. at 29.

A. Again, the Court Below Properly Held That Appellants Could Not Invoke a Constitutional Privilege to Conceal Evidence of Events That They Had Placed at Issue by Their Lawsuit.

Appellants' claim that they are constitutionally exempt from producing the Walla Walla videotape was the subject of a prior unsuccessful appeal. In *Rhinehart v. KIRO, Inc.*, 44 Wash. App. 707, 723 P.2d 22 (1986), *review denied*, 108 Wash. 2d 1008, *appeal dismissed sub nom., Rhinehart v. Tribune Pub. Co.*, 108 S. Ct. 51 (1987), the court affirmed the dismissal of another one of appellants' defamation lawsuits because of their refusal to produce the Walla Walla videotape, holding that

> appellants are "attempting to assert a privilege to withhold evidence in a private suit where they seek damages based upon the allegedly privileged information."

44 Wash. App. at 709, 723 P.2d at 24, *quoting Rhinehart v. Seattle Times Co.*, 98 Wash. 2d 226, 257-58, 654 P.2d 673, 691 (1982), *cert. denied*, 467 U.S. 1230 (1984).

The court below adopted this rationale and thus found "meritless the appellants' argument that their freedom to exercise religion was violated by the order compelling discovery of the tapes." J.S. App. at 31-32. While appellants decry its ruling as "paternalistic" and "nonsensical" (J.S. at 18-20), they have not offered a single decision that is inconsistent with the court's conclusion.[10] J.S. at 18-20.

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[10] Thus, as in the *KIRO* case, the record does not reflect any violation of the First Amendment's free exercise clause:

> The orders in issue here were permissible because they regulated what Appellants were required to do with their tapes if they wished to pursue their defamation claims and not what Appellants were allowed or were required to believe.

Appellees' Joint Motion to Dismiss at 11, filed in *Rhinehart v. Tribune Pub. Co.*, 108 S. Ct. 51 (1987).

B. Appellants' Argument That They Were Entitled to Issuance of a Second Protective Order Is At Odds With the Record and Inconsistent With This Court's Decision in Seattle Times.

Appellants insist that they were entitled to issuance of their proposed protective order in 1986 because "the trial court had found good cause for protection." J.S. at 20. The "good cause" that established appellants' right to their 1981 protective order, however, did not automatically entitle them to insist upon issuance of a different, and far more stringent, protective order in 1986. In fact, when he found "good cause" for entry of the 1981 protective order that was the subject of this Court's decision in *Seattle Times*, the trial judge rejected appellants' efforts to impose the additional limitations on the scope of discovery that they now claim were implicit in his decision to issue the 1981 order.[11]

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[11] In December 1980, appellants sought a protective order covering "all information" which defendants obtained in discovery. SCP 588-604, 1518-34. At that time, appellants knew that the Walla Walla videotape was a subject of discovery, because they had already acknowledged that the videotape was relevant to their case and had promised to provide a copy. SCP 217, 329. Their proposed December 1980 protective order, which specifically referenced videotapes and other documents, would have forbidden nonlitigation use of any such materials. SCP 596-97, 602-03, 1526-27, 1532-33. The trial court denied their motion. CP 152-67.

Appellants immediately moved for reconsideration, again arguing for a broad protective order restricting appellees' use of any documents obtained during discovery. SCP 766-82, 1555-71. Appellants requested that appellees be prohibited from disseminating any

> documents of any kind whether in writing or on tape (magnetic or otherwise) obtained from plaintiffs through discovery . . . and identified by the Aquarian Foundation as available only to its members.

SCP 1568. On June 21, 1981, the trial court rejected this request. SCP 1502-06.

Appellants again sought "to expand the protective order . . . to include materials relating to the internal organization of the

In 1986, after the case was remanded and their lawsuit was teetering on the brink of dismissal, appellants again moved for entry of a protective order that would have restricted or denied appellees access to the Walla Walla videotape but failed to present any evidence that the 1981 protective order (which by its terms covered "all of the discovery processes") was insufficient to prevent disclosure of members' identities, that the newspaper intended to broadcast or disseminate the videotape, or that any confidential information relating to individual Foundation members would be disclosed by viewing the videotape.[12] CP 345-83. The trial court concluded that appellants had failed to establish the "good cause" necessary for the issuance of a second protective order and the Court of Appeals found no abuse of discretion under the state's Civil Rules. CP 344; J.S. App. at 31.

The refusal to issue appellants' proposed protective order presents no substantial federal question. In *Seattle Times* this Court stated that there is "broad discretion" on the part of a "trial court to decide when a protective order is appropriate and what degree of protection is required" and held that "[t]he unique character of the discovery process requires that the trial court have substantial latitude to fashion protective orders." *Seattle Times*, 467 U.S. at 36. The Court concluded that, in adjudicating federal constitutional questions relating to the issuance of such protective orders, "[i]t is sufficient" that the Washington courts found no abuse of discretion. *Id.* at 37.

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church, its philosophy, and teachings." SCP 1507-08. But on June 26, 1981, despite these repeated requests to broaden the order, the trial court issued the protective order that was the subject of *Seattle Times*, which restricted publication only of names and addresses and financial information. SCP 1513-14.

[12] The performance had, after all, taken place in front of 1,100 inmates and others at the Walla Walla State Penitentiary. *See* J.S. App. at 28.

III. THE DECISION TO AWARD ATTORNEYS' FEES AND EXPENSES AS A CONSEQUENCE OF APPELLANTS' FRIVOLOUS APPEAL DOES NOT VIOLATE ANY FEDERAL CONSTITUTIONAL RIGHT.

A. Appellants' Challenge to RCW 4.84.185 Is Irrelevant Because the Washington Statute Was Not at Issue in This Case.

Appellants claim that RCW 4.84.185, a Washington statute that enables judges to issue fee awards in frivolous lawsuits, violates their due process rights. J.S. at 21-27. They ask this Court to grant review because they say "there are no standards to predict when and whether the State court will enforce this statute." *Id.* at 27.

Appellants' attack is utterly misplaced. The statute has nothing to do with this case.[13] This Court is neither a "debating society" nor a forum "for the ventilation of public grievances." *Valley Forge Christian College v. Americans United For Separation of Church and State*, 454 U.S. 464, 472, 473 (1982). Appellees did not rely upon RCW 4.84.185 when they requested an award of expenses and attorneys' fees as a result of appellants' frivolous appeal. Nor was the statute the basis of the Court of Appeals' conclusion that the appeal was frivolous and that appellees were entitled to their reasonable attorneys' fees. J.S. App. at 40-42.

B. In Any Event, Appellants' Due Process Arguments Are Not Supported by the Record.

1. *Appellants Received Ample Warning.*

Appellants' claim that they were denied "fair warning" (J.S. at 21) that they might be sanctioned for

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[13] In fact, RCW 4.84.185 was utilized by the trial judge in an entirely different Rhinehart defamation case, when she awarded The Seattle Times approximately $42,000 in attorneys' fees and expenses because the lawsuit was "frivolous and was advanced without reasonable cause" and was filed "to harass and to needlessly increase the cost of this litigation to defendants." *Rhinehart v. Seattle Times*, 15 Med. L. Rptr. 1509 (King County Super. Ct. 1988). Appellants' challenge to that fee award is now pending in the Washington Court of Appeals.

pursuing a frivolous appeal is at odds with the record. They were in fact provided with ample warning.

The Washington Supreme Court ruled against appellants' constitutional theory in 1982, stating that it had reviewed appellants' case authorities "and [found] none which supports the theory in the circumstances of this case." *Rhinehart v. Seattle Times Co.*, 98 Wash. 2d at 258, 654 P.2d at 691. In 1986, when the Court of Appeals rejected appellants' second attempt to present their constitutional arguments, appellants narrowly avoided reimbursing their opponents for the "meritless" appeal, because "the instant case presented an appeal found to be without merit but not one that this court can deem frivolous or interposed to harass or for purposes of delay." *Rhinehart v. KIRO, Inc.*, 44 Wash. App. at 711, 723 P.2d at 25.

In January 1987, however, they offered the same stale arguments to Judge Dore, who concluded that their claims were "frivolous and in bad faith because this issue has already been decided against them in this lawsuit and in another lawsuit." CP 660. When appellants appealed Judge Dore's ruling, the warnings grew more explicit, with appellees repeatedly reminding appellants that the arguments they were advancing were utterly frivolous. While appellants apparently ignored these warnings, they cannot contend they were not given.

2. *Washington's Standards for Determining What Is a Frivolous Appeal Are Neither Vague Nor a "Hodge-Podge."*

In an apparent due process challenge, appellants suggest that frivolousness is "a vague, undeveloped concept" and that the case law defining what constitutes a frivolous appeal is nothing more than "a hodge-podge of somewhat unscientific criteria as to what is 'frivolity'." J.S. at 24. Appellants are mistaken.

Washington has developed clear, precise, and well-established standards for determining on a case-by-case

basis whether an appeal is frivolous. The standards are in fact quite stringent:

> In determining whether an appeal is frivolous and was, therefore, brought for the purpose of delay, justifying the imposition of terms and compensatory damages, we are guided by the following considerations: (1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.

Millers Casualty Ins. Co. v. Briggs, 100 Wash. 2d 9, 15, 665 P.2d 887, 891 (1983), *quoting Streater v. White*, 26 Wash. App. 430, 434-35, 613 P.2d 187, 191, *review denied*, 94 Wash. 2d 1014 (1980).

In its decision below, the Court of Appeals applied the *Millers Casualty* test in awarding appellees their reasonable attorneys' fees. The court also applied CR 11. J.S. App. at 40-42. The standards that the court applied were clear and unambiguous. Indeed, they are virtually indistinguishable from the standards adopted by other state and federal courts. J.S. at 24-26.

3. *Appellants Cannot Complain of Any Constitutional Violation, Having Been Afforded Several Opportunities to Present the Same Meritless Arguments.*

Appellants contend that the imposition of sanctions violates their due process right because their repetitive appeals are an attempt to press "novel" issues, "test the validity of established legal principles and seek the adoption of new legal propositions." J.S. at 25. They claim, therefore, that the power to award sanctions "will create

a chilling effect" preventing litigation by "particularly unpopular groups" and "affords an arbitrary arm to use in penalizing unpopular litigants." J.S. at 22, 28.

This argument might have had more appeal if appellants had suffered sanctions when they first presented their constitutional theories. Innovative and novel legal issues are one thing; repetitive and frivolous arguments are quite another. "One claim, which a court . . . may think baseless, may go unnoticed; but a pattern of baseless, repetitive claims may emerge which leads the fact-finder to conclude that the . . . judicial processes have been abused." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972).

In fact, appellants have pressed their constitutional theories on the Washington courts (and this Court) in four separate appeals—the first involving the Seattle Times, the second KIRO, the third the Edwards and Barbieri law firm (which had represented them in their first appeal), and the fourth the Seattle Times again. They have also imposed themselves on the federal courts in Seattle and in the Ninth Circuit, causing one bankruptcy judge to complain that their "flagrant and intentional violation of the rules of discovery," which included Rinehart's appearance at his deposition dressed in a gorilla costume was designed to make a "mockery of the Court and of the judicial process." Findings of Fact and Conclusions of Law at 11, *Herr v. Aquarian Foundation, Inc.*, Adversary No. 80-0871 (Bankr. W.D. Wash. Feb. 28, 1984), *aff'd*, No. C84-496V (W.D. Wash. Sept. 7, 1984), *appeal dismissed*, No. 84-4369 (9th Cir. Oct. 11, 1985) (attached to Respondents' Answer to Motion for Reconsideration at Ex. H, filed July 22, 1988).

While appellants charge that they have become the victim of "a game of Russian roulette," J.S. at 27, they cannot justifiably complain, having pulled the trigger themselves on at least four prior occasions in defiance of court rulings. Given this sorry record, the decision to award sanctions was clearly not an abuse of discretion.

4. *State Courts Have the Inherent Authority to Adjudicate and, if Necessary, Impose Sanctions for Frivolous and Repetitive Constitutional Challenges.*

Appellants' claim that the *Millers Casualty* test improperly "penalizes the litigant who seeks a federal forum to assert federal rights" is premised upon a fundamentally mistaken assumption—that the state courts serve no purpose other than being passive conduits to this Court. J.S. at 28. State courts are not, however, simply doorkeepers to this Court. This Court has repeatedly acknowledged the competence of state courts to adjudicate federal constitutional claims. *See, e.g., Allen v. McCurry*, 449 U.S. 90, 105 (1980).

The authority to entertain federal constitutional claims necessarily includes the inherent authority to impose sanctions that will deter frivolous federal constitutional claims. Given that Washington's courts have afforded appellants several opportunities to present the same constitutional arguments, that the state's courts have fairly adjudicated all of their federal claims, and that this Court has on three separate occasions refused to take review, appellants cannot seriously contend that they have been unduly hampered in their efforts to bring their theories to the attention of this Court.

C. Appellants Have Not Articulated Any Equal Protection Rights That Were Violated by the Court Below.

In concluding that appellants' appeal was frivolous, the Court of Appeals relied upon three Washington court rules. Two rules, CR 11 and RAP 18.7, impose obligations of good faith and reasonable investigation.[14] The other rule, RAP 18.9(a), permits an appellate court to

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[14] For example, RAP 18.7 imposes the duties of CR 11 upon appellate litigants and their counsel, while the language of CR 11 is identical to its federal counterpart, Fed. R. Civ. P. 11. *See* Apps. A, B, *infra*.

award damages in the event of a frivolous appeal.[15] The Rule imposes upon litigants and their counsel duties and obligations similar to those imposed by this Court.[16] While appellants would have the Court believe that the imposition of sanctions was a freakish accident, the fact is, as this Court has acknowledged, "unethical conduct in the setting of the adjudicatory process often results in sanctions." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. at 512.

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[15] *See* App. C, *infra*. An analogous rule has been adopted by the federal courts. *See* Fed. R. App. P. 38 ("[i]f a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee"). Federal statutes also provide for appropriate sanctions to deter frivolous litigation. *See* 28 U.S.C. § 1927 (providing that an attorney who "so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct"); 28 U.S.C. § 2103 (where an appeal is improvidently taken and is to be treated as a petition for writ of certiorari and "there appears to be no reasonable ground for granting a petition for writ of certiorari," the Court may adjudge to the respondent "reasonable damages . . . and single or double costs").

[16] Thus, appellants' statement that "[f]rivolity has not been previously reviewed by this court," J.S. at 25, 28, is not well taken. Rule 49.2 provides that "[w]hen an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages." The Rule has been in place since 1803. *See Talamini v. Allstate Ins. Co.*, 470 U.S. 1067, 1070 n.7 (1985) (Stevens, J., concurring). The decisions of this Court have demonstrated that monetary sanctions are often necessary to discourage frivolous and repetitive appeals. *See, e.g., In re McDonald*, 57 U.S.L.W. 3545 (1989) (per curiam); *Tatum v. Regents of the University of Nebraska-Lincoln*, 462 U.S. 1117 (1983); *Bohn v. Bohn*, 316 U.S. 646, 647 (1942) (per curiam); *Mississippi Central R.R. Co.* v. *Smith*, 299 U.S. 518 (1936); *Roe v. Kansas*, 278 U.S. 191, 193 (1929); *Slaker v. O'Connor*, 278 U.S. 188, 191 (1929); *Wagner Electric Mfg. Co.* v. *Lyndon*, 262 U.S. 226, 233-34 (1923); *Southern Ry. Co. v. Gadd*, 233 U.S. 572, 581 (1914); *Deming v. Carlisle Packing Co.*, 226 U.S. 102, 110 (1912). *See also* Sup. Ct. R. 50.7 (providing that "[i]n an appropriate instance, the Court may adjudge double costs").

1. *Distinctions Between Frivolous and Nonfrivolous Appeals Do Not Violate the Equal Protection Clause.*

Appellants argue that in finding that their appeal was frivolous the Court of Appeals violated their right of equal protection under the Fourteenth Amendment, apparently because they "challenge the status quo," because they are "unpopular," or because they are viewed differently from "more traditional litigants." J.S. at 27-28. However phrased, appellants' equal protection argument is utterly without merit.

Washington has a policy of deterring frivolous appeals. Pursuant to that policy, Washington appellate courts are empowered to award compensatory sanctions when they find an appeal is frivolous. The classification in question distinguishes between frivolous and nonfrivolous appeals. Absent a suspect class or a fundamental right (which, contrary to appellants' suggestions, are not involved here),[17] a classification is presumed constitutional under the equal protection clause if it is " 'rationally related to a legitimate state interest.' " *Bankers Life & Casualty Co. v. Crenshaw*, 108 S. Ct. 1645, 1652 (1988), *quoting Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985).

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[17] Appellants' assertion that the Court of Appeals violated their First Amendment rights because it treated them "less favorably than other cases . . . filed by nonreligious groups" is without foundation. J.S. at 27. Indeed, their case is virtually indistinguishable from *Camer v. Seattle School District No. 1*, 52 Wash. App. 531, 540, 762 P.2d 356, 361-62 (1988), in which the court ruled an appeal by secular litigants frivolous because the "case presents essentially the same claims and issues on which the Camers were defeated in two prior appeals" and "the Camers have persisted in appealing this case even though they present no debatable issues and their position is so devoid of merit that there is no possibility of reversal." Nor can appellants claim that, by exercising its fee-shifting authority, the court violated their First Amendment right to pursue litigation. As this Court has held, abuse of process is not freedom of expression. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972).

Clearly, judicial resources are not inexhaustible. *See In re McDonald*, 57 U.S.L.W. 3545, 3546 (1989) (per curiam) ("Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources."). A state has an obvious interest in deterring frivolous appeals, which simply consume the time and energy of its appellate judges to the exclusion of more significant and compelling cases. *See Bankers Life*, 108 S. Ct. at 1653 ("The Constitution does not forbid Mississippi from singling out a group of litigants that it rationally concludes is most likely to be deterred from bringing meritless claims at the least cost to the State."). Intermediate appellate courts such as the Washington Court of Appeals, which have no discretion in determinnig which final judgments they will review, must of necessity rely upon rules such as RAP 18.7, CR 11, and RAP 18.9(a) to avoid being swamped by frivolous appeals.

Furthermore, the state's goal in deterring frivolous appeals is directly related to the classification in question. An appeal that cannot satisfy the five-part test in *Millers Casualty, supra*, is an appeal that by definition is completely devoid of merit. Because only the most meritless cases will fail to pass the test, appellants' equal protection attack is unfounded.[18]

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[18] Indeed, the classification scheme at issue here is far more precise and rational than the Mississippi statute at issue in *Bankers Life*, which allegedly promoted the state's interest in discouraging frivolous appeals by imposing an automatic penalty of 15 percent of the judgment amount against every unsuccessful appellant, regardless of the merits of the appeal. *See Bankers Life*, 108 S. Ct. at 1651-54. If, as the Court concluded, the Mississippi scheme did not offend the Fourteenth Amendment's guarantee of equal protection because it was "reasonably related to the State's objectives of discouraging frivolous appeals, compensating appellees for the intangible costs of litigation, and conserving judicial resources," *id.* at 1654, then *a fortiori* the stricter, narrower classification at issue here is constitutional.

2. *The Question Whether Sanctions May Be Awarded For The Assertion of Frivolous State Law Theories Is Neither Substantial Nor A Federal Question.*

Appellants also seek review by this Court of the standards utilized by state courts in determining when an argument based upon state law is frivolous. Thus, they argue that the Court of Appeals violated their rights under the United States Constitution when it concluded that their *state law* arguments concerning the scope and interpretation of the Washington priest-penitent privilege statute, RCW 5.60.060(3), were frivolous. J.A. at 27-28.

Adoption of their theory would represent an unprecedented and bizarre expansion of federal judicial power, by turning every state law claim into a potential federal constitutional issue—at least those state law claims that are sufficiently meritless to be deemed frivolous by the state courts. The result would be a topsy-turvy jurisprudence that would transform the flotsam and jetsam of state jurisprudence into federal questions and sweep the most abusive litigants, with the most insubstantial and meritless state law causes of action, onto this Court's docket.[19]

D. Appellants Failed to Assert Their Federal Constitutional Arguments on a Timely Basis.

Appellants did not timely raise the constitutional claims that they seek to bring to this Court. Therefore,

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[19] As a result, this Court would also be forced to endure the same tedious and disspiriting abuses that led the state courts to conclude that sanctions were appropriate. For example, appellants represent to this Court that their appeal involves the interpretation of the state's priest-penitent statute, a provision "that had never before been interpreted by the Appeals Court." J.S. at 28. In fact, in August 1986, appellants' peculiar interpretation of the Washington priest-penitent statute was rejected as "without merit" by the Court of Appeals in a wholly different case involving these same appellants. Jurisdictional Statement at 39, filed in *Aquarian Foundation v. Law Offices of Edwards & Barbieri*, 108 S. Ct. 222 (1987), *rehearing denied*, 108 S. Ct. 1065 (1988).

this Court should decline this appeal. *See Illinois v. Gates*, 462 U.S. 213, 218-20 (1983); *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969).

In their briefing to the Court of Appeals, appellees argued that they were entitled to appropriate sanctions because the appeal was frivolous. In their response, appellants ignored these arguments and did not argue that any federal constitutional provision precluded such relief.

Indeed, appellants' federal claim surfaced only on a motion for motion for reconsideration after the Court of Appeals rendered its decision. Even then, their argument amounted to nothing more than a "vague appeal to constitutional principles." *Bankers Life & Casualty Co. v. Crenshaw*, 108 S. Ct. at 1651. Although appellants claimed that the court's decision violated their "rights to equal protection," they did not specify the source of these rights. The Washington constitution, like its federal counterpart, prohibits a denial of equal protection. *Petersen v. Washington*, 100 Wash. 2d 421, 443-46, 671 P.2d 230, 245-46 (1983) (applying Wash. Const. Art. I, § 12). Appellants, therefore, did not raise a federal claim in their motion for reconsideration. *See New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67-68 (1928); *New York Central & Hudson River R.R. Co. v. New York*, 186 U.S. 269, 273 (1902).

When they sought review with the Washington Supreme Court, appellants argued that the determination that their appeal was frivolous violated their "due process rights." Assuming this objection was timely, it was still insufficient. *Washington v. Davis*, 38 Wash. App. 600, 604-06, 686 P.2d 1143, 1145-46 (1984) (applying Wash. Const. Art. I, § 3). Appellants thus did not assert a federal claim. *See Bowe v. Scott*, 233 U.S. 658, 664-65 (1914). Finally, although appellants suggested that the Court of Appeals decision violated their right to "freedom of speech" allegedly contained in the Seventh Amendment, and their Sixth Amendment "constitutional right of ac-

cess to the courts," neither suggestion raised a proper federal claim.[20]

CONCLUSION

For the reasons stated above, this Court should dismiss the appeal or, in the alternative, treat the papers whereon the appeal was taken as a petition for writ of certiorari and deny certiorari.

Respectfully submitted,

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Dated: March 24, 1989

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[20] For one thing, the Seventh Amendment to the United States Constitution (which has never been applied to the states) does not protect freedom of speech. *See* U.S. Const. Amend. VII. For another, the Sixth Amendment by its terms refers only to criminal prosecutions. *See* U.S. Const. Amend. VI.

APPENDICES

APPENDIX A

Washington Rule of Appellate Procedure ("RAP") 18.7:

RULE 18.7. SIGNING AND DATING PAPERS

Each paper filed pursuant to these rules should be dated and signed by an attorney or party as provided in CR 11, except papers prepared by a judge, commissioner or clerk of court, bonds, papers comprising a record on review, papers which are verified on oath or by certificate and exhibits.

APPENDIX B

Washington Civil Rule ("CR") 11:

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND LEGAL MEMORANDA: SANCTIONS

Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and date his pleading, motion, or legal memorandum and state his address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by him that he has read the pleading, motion, or legal memorandum; that to the best of his knowledge, information, and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violatin of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropri-

ate sanction, which may include an order to pay to the other party or partieos the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

APPENDIX C

Washington Rule of Appellate Procedure ("RAP") 18.9(a):

RULE 18.9 VIOLATION OF RULES

(a) *Sanctions.* The appellate court on its own initiative or on motion of a party may order a party or counsel who uses these rules for the purpose of delay or who fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.